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No. 276] NEW DELHI, MONDAY, SEPTEMBER 12, 1955

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 6th August 1955

S.R.O. 1981.—Whereas the election of Shri Sangram Singh, as a member of the Legislative Assembly of the State of Rajasthan, from the Bhim constituency of that Assembly, has been called in question by an election petition presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Bhoorey Lal, son of Shri Kanhaiya Lal, resident of Udaipur City;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, KOTAH

QUORUM:

1. Shri P. D. Pande, *Chairman*.
2. Shri J. N. Prasad Mathur, *Judicial Member*.
3. Shri B. S. Darbari, *Advocate Member*.

ELECTION PETITION NO. 297 OF 1952

Shri Bhooreylal son of Kanhaiya Lal, resident of Udaipur City, Rajasthan—
Petitioner.

Versus

1. Shri Sangram Singh, son of Vijaya Singhji, resident of Deogarh, District Udaipur.
2. Shri Bal Chand Vasudco, resident of Deogarh.
3. Shri Swaroop Singh Chundawat, Advocate, resident of Udaipur.—*Respondents.*

COUNSEL:

Sarvashri Nathu Lal Jain, Pana Chand Jain, Indra Lalji Goel, Basant Lal Sarupia & Kesar Singh Hiran as also Kumari Kanta Bhatnagar—*For the petitioner.*

And

Sarvashri U. M. Trivedi, Ram Swarup and Hukum Raj Mehta—*For respondents No. 1.*

JUDGMENT

Shri Bhooreylal Baya has filed this election petition with the prayer that the election to the Rajasthan States Legislative Assembly from Bhim Constituency (in Udaipur District) be declared wholly void, Respondent No. 1 be unseated and disqualified and re-election be ordered.

It appears that Shri Bhooreylal Baya, who was a Minister both under the former Rajasthan Government as also when the Greater Rajasthan was formed, was a Congress candidate at the last general election for the Rajasthan State Legislative Assembly from Bhim Constituency, against the present three respondents, out of whom the first was nominated by the Socialist Party and the second by the Jan Sangh. Respondent No. 3 withdrew his candidature and the Petitioner and the first two respondents contested the seat. Respondent No. 1, who is admittedly a Jagirdar of 210 villages was declared elected on the 31st of January 1952.

The petitioner has accordingly challenged the election of respondent No. 1 on the following two main grounds:—

(1) That the respondent No. 1 being a Jagirdar holds an office of profit and so his Nomination Paper has been illegally and improperly accepted by the Returning Officer and if it had not been so accepted the result of the election would have been entirely different.

(2) That the respondent No. 1 had resorted to the following corrupt and illegal practices as detailed in Schedule 'A' of the Petition:—

(i) (a) He, his agents and canvassers preached in the name of religion openly and the priests were telling the people that the applicant and his party were slaughtering cows and if they voted for them, they will suffer the wrath of God, and

(b) They were openly preaching violence and creating terror. They were telling the people that dacoities would stop only if they voted for the respondent No. 1.

(ii) On the previous night on 6th January 1952 when the polling was to take place in Kalda the respondent No. 1's agent Dhana Singh with two others asked the people of village Palra to drink as much as they liked and stated that the Respondent will pay the charges. When the people refused to drink, they were threatened to the effect that they will be sent to Jail if they did not vote for the respondent No. 1.

(iii) On 4th January 1952, in Bhim when Shri Kanhaiyalal was distributing identity cards to the voters on behalf of the petitioner, the respondent No. 1 himself threatened to shoot him if he voted and worked for Congress Party to which the petitioner belongs.

(iv) The agent of the respondent No. 1, Shri Raghunath Rajput of Kalaguman, threatened one Pana Rawat of Kalaguman if he voted for the petitioner.

(v) A large number of dacoities were committed in the area of this particular constituency and in the adjacent constituencies of Kumbhalgarh and Pali district, during the period when nomination papers were filed and the elections took place. Dacoities in Ajectgarh, Kheekarvas, Mandawar and in train were exploited by the respondent No. 1, his agents and canvassers to their best advantage for the promotion of the elections of the respondent No. 1, and lawlessness was openly resorted to by them.

(vi) Respondent No. 1, his agents and canvassers openly supplied drinks at almost all polling stations on the previous night of polling and after the voting was finished.

(vii) Respondent No. 1 promised to pay a sum of Rs. 100 to one Sukh Lal Lumbardar and paid Rs. 20 to Gopal Singh of Lalpura for procuring their votes and the votes of their villagers.

(viii) Shri Amirsingh Kachhikulawala, agent of the respondent No. 1 paid Rs. 100 to Girdhari Singh Rawat of Kukra village and Rs. 50 to Kishan Singh of the same village for procuring their votes and the votes of their relations as well as the votes of the people they could influence.

(ix) Respondent No. 1 and his employees who had been exercising all the administrative powers unduly influenced the population of that area and the voters had cast their votes by undue influence.

Out of the three Respondents, the last two did not put in appearance at all, and so, we have proceeded *ex parte* against them from the very beginning. But Respondent No. 1 Shri Sangram Singh contested the petition, and although, he admitted that he was a Jagirdar, he denied that he held or holds any office of profit and asserted that his Nomination Paper had not been improperly accepted. He further denied all the allegations made by the Petitioner in regard to the corrupt and illegal practices. He also pleaded that the petition is not maintainable, because, the petitioner has not filed any receipt for the deposit of security as contemplated by section 117 of the R.P. Act of 1951. Further, according to him, the petition is false, vexatious and malacious and so he is entitled to Rs. 1,000 as compensatory costs under Section 35A of the Civil Procedure Code.

On the basis of the written statement, as filed by the respondent No. 1 the following issues were framed on 11th December 1952:—

- (1) Did the petitioner enclose with the petition a Government Treasury receipt showing a deposit of Rs. 1,000 as security for costs? If not, should the petition be dismissed?
- (2) Did Respondent No. 1 as Jagirdar hold an office of profit under the Government of Rajasthan at the time of his nomination?
- (3) Was the nomination paper of Respondent No. 1 improperly accepted, and if so, was the result of the election materially affected by that acceptance?
- (4) Did Respondent No. 1 resort to any corrupt and illegal practices and undue influence as alleged in Schedule 'A' of the petition, and if so, with what effect on the election?
- (5) Is Respondent No. 1 entitled to compensatory costs to the extent of Rs. 1,000 under section 35A of the Civil Procedure Code?
- (6) To what reliefs, if any, is the petitioner entitled?

After the framing of the issues, the case was adjourned and fixed for the petitioner's evidence alone from the 16th to 21st of March 1953. Subsequently, it was discovered that the 16th of March was a holiday, and so, the said evidence was ordered to be proceeded with from the 17th of March 1953. On the latter date, the Respondent did not appear nor did any of his three counsel, and so, the Tribunal proceeded *ex parte* against him after waiting till 1-15 p.m. The petitioner and his two witnesses were examined on the 17th and five more witnesses on the 18th. On the 19th the case was adjourned to the 20th on account of non-arrival of any witness and on the later date, one of the respondent's alleged counsel, Shri Bharat Raj appeared but was not allowed to take part in the proceedings in view of the fact that it had already been ordered on the 17th that the case should proceed *ex parte* against the respondent. Petitioner's three more witnesses viz., Kanhaiva Lal, Nathu Singh and Puran Singh were then examined but were not allowed to be cross-examined on behalf of the respondent in spite of the telegram from his second counsel Mr. Trivedi. The telegram was ordered to be filed and this is all that happened on the 20th and the relevant order is recorded on the order-sheet.

Then followed the order of the 21st which was passed on respondent's application at page 69 and affidavit at page 70 as filed by a clerk of one of his counsel. This application asked that the election proceedings be set aside and the respondent be allowed to cross-examine those of petitioner's witnesses whose evidence had already been recorded. The Tribunal heard and rejected the application on the ground that there was no just or unavoidable reason for the non-appearance of the respondent himself or any of his three learned counsel between the 17th and 19th of March 1953.

Immediately after the rejection of the aforesaid application Respondent's counsel filed another application at page 74 praying that the Respondent be allowed to join in the proceedings from the stage where it had reached. This application was put up for hearing on the 23rd of March and was also rejected because, the learned counsel failed to satisfy us that it could be entertained either under section 151 C.P.C. or under O. 9 r. 7 of the Civil Procedure Code.

Aggrieved by the aforesaid three orders of the 20th, 21st and 23rd of March 1953, the respondent No. 1 filed a writ application before the Rajasthan High Court Bench at Jaipur and on 24th March 1953 obtained a stay order which being first extended by the High Court and then confirmed by the Supreme Court remained in force upto 22nd March 1955. The High Court rejected this writ application on

17th July 1953. Then, on 19th August 1953, the respondent filed before the High Court a petition for leave to appeal to the Supreme Court under Article 133(i) (c) of the Constitution of India. This petition was allowed in December 1953. This matter then went upto the Supreme Court, which, while deciding the appeal on 22nd March 1955, directed that the aforesaid three orders be reconsidered by this Tribunal in the light of certain observations and directions as contained in its judgment and briefly curled up and summarized as follows:—

“A party has a right to appear and plead his cause on all occasions when that cause comes on for hearing, and so, as far as possible, no proceeding in a court of law should be conducted to the detriment of a person in his absence. Again, if a party does appear on the day to which the hearing is adjourned he cannot be stopped from participating in the proceedings simply because he did not appear on the first or some other hearing. But though he has the right to appear at an adjourned hearing, he has no right to set back the hands of the clock and O. 9 r. 7 C.P.C. makes it clear that unless good cause is shown he cannot be relegated to the position that he would have occupied if he had appeared. Broadly speaking, after all the various factors have been taken into consideration and carefully weighed, the endeavour should be to avoid such decisions and to afford litigants a real opportunity of fighting out their cases fairly and squarely and costs will be adequate compensation in many cases and in others the court has almost unlimited discretion about the terms it can impose provided always the discretion is judicially exercised and is not arbitrary. Although, O. 9 rules 6 and 7 C.P.C. do not apply to the facts of the case O. 17 r. 2 applies and the court is given the widest possible discretion either to dispose of the case in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit and its hands are not tied by the so called *ex parte* order. This Tribunal should exercise the discretion vested in it by law along the lines indicated above and in doing so will consider whether the petitioner was in fact misled or could have been misled if he had acted with due diligence and caution when he closed his evidence on the 20th of March 1953.”

Subsequently, on 28th May 1955 on being confronted by the above Supreme Court judgment the contesting parties *viz.* the petitioner and respondent No. 1 effected a compromise of which the relevant terms were:—

- (1) That the petitioner will produce his three witnesses already examined on 20th March 1953 (namely Kanhaiya Lal, Nathu Singh and Puran Singh) for the cross-examination by the respondent at his (petitioner's) own cost.
- (2) That the petitioner will have an opportunity to produce further evidence in support of his petition.
- (3) That after the evidence of the petitioner the respondent will have an opportunity to produce his evidence and also offer arguments.
- (4) That consolidated costs, to be determined by the Tribunal shall be paid by the respondent to the petitioner and the amount so fixed will be binding on the parties.

Under the last term of the compromise, this Tribunal awarded Rs. 750 as costs or compensation to the petitioner against respondent No. 1. But when the proceedings started further, the petitioner was able to produce his witness Kanhaiya Lal (P.W. 9) only for cross-examination by respondent No. 1, and so, the evidence in examination-in-chief of his remaining two witnesses Nathu Singh (P.W. 10) and Puran Singh (P.W. 11) was struck off and the parties were allowed to close all their evidence.

Now, having heard the arguments for the parties on the 19th and 20th of August 1955 and bearing in mind the statements of the learned counsel for the contesting parties as recorded on the order-sheet on the 19th August 1955, we proceed to discuss the issues and give our judgment.

Findings

Issue (1).—Respondent No. 1 does not press this issue. It however appears from the statement on oath of the petitioner that along with the election petition he had deposited Rs. 1,000. Ex. IV is the counterpart of the Treasury receipt and Ex. V is the Election Commissioner's acknowledgment of the deposit. The first portion of this issue is accordingly decided in the affirmative and the second one in the negative.

Issues (2) and (3).—These two issues are co-related and may therefore be discussed together. The learned counsel for the petitioner has not offered any arguments on these issues and has also stated that he does not press them. These issues cover practically the same ground as issue No. 1 in Election Petition No. 91 of 1952 (Shri Jai Singh Vs. Shri Gopal Singh and others), and in our judgment in that case, we have discussed the status of a Jagirdar at full length and have arrived at the definite conclusion that a Jagirdar does not hold any office of profit and that his nomination to an election is not improper. There is no fresh material on the present record to enable us to deviate from the conclusion, and so, both of these issues are decided against the petitioner.

Issue (4).—The relevant alleged corrupt and illegal practices and undue influence as set up by the petitioner in Schedule A of his petition have been reproduced by us in the introduction to this judgment and have been numbered as (i) to (ix) for facility of reference, and so, we shall now discuss the points involved with reference to those numbers.

(i) (a) and (b).—We have closely studied the contents of these two clauses (a) and (b) and cannot but agree with Respondent No. 1 that the allegations made against "opposite party No. 1 (i.e. Respondent No. 1), his agents, canvassors and priests" are too vague to merit any serious scrutiny or consideration. Section 83 of the R.P. Act, 1951 requires that full particulars of the alleged corrupt practices should have been given including as full a statement as possible as to the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. This requirement of law has not been fulfilled by the petitioner in spite of the warning given to him by the Respondent No. 1 in his written statement (*vide* his reply to paragraph 1 of Schedule A to the petition). We, therefore hold that the particulars of the agents, canvassors and priests as given under Clauses (a) and (b) are insufficient (*vide* I E.C.D. page 257).

The learned counsel for the petitioner could not make bold to assert that the contents of clauses (a) and (b) were not too vague and indefinite but he took shelter under the argument that it lay upon respondent No. 1 to ask for further particulars under O. 16 r. 5 C.P.C. We have, however, found it impossible to accept the argument, because, it is no part of respondent's duty to help out the petitioner's case by repairing his omissions" (Hammond Election Cases page 624).

In proof of clause (a), the petitioner has examined himself on oath and has stated that he personally heard respondent No. 1 declare to the public at Bhim that a vote to the Congress amounted to cow-killing, and that those who voted for the Congress would go to hell. He has further deposed that he also heard Respondent No. 1's agents or Pairokars Hamir Singh, Dhana Singh, Dhanraj Sethi, Hastimal, Ghazi Singh and Jait Singh Jamadar making similar statements. It is clear from the admissions of D.W. 2, 3 and 4 that apart from Dhana Singh and Jait Singh Jamadar, the remaining 4 of the above named 6 persons did act as workers or election agents for Respondent No. 1. But these simple admissions do not amount to the proof that they were also responsible for the statements which he petitioner has tried to put in their mouths in regard to the "cow-killing" and "going to hell"; so far as Bhim proper is concerned. It is rather surprising that in regard to what the Respondent No. 1 is alleged to have stated in Bhim about cow-killing, there is no other witness to support the petitioner, and the latter being a lay, his solitary statement cannot be regarded as sufficient proof.

The petitioner has, of course, examined Pitha Singh (P.W. 2) to depose that on the 15th of January 1951 there was a meeting convened by the Respondent No. 1 at village Andrai, where, he told about 200 people that if they voted for the Congress cows will be slaughtered. Petitioner's another witness Partapmal (P.W. 4) has stated that about 20 or 25 days before the election Respondent No. 1 and his companions including Jait Singh and Ugar Sen had held a meeting at Village Togi where the latter two persons had addressed the meeting and had said that the Congress was responsible for cow-slaughter and that if the people wanted that no more cows should be killed, they should vote for the Respondent and get their religion protected. Petitioner's third witness Tej Singh (P.W. 8) supports P.W. 4 in regard to what happened in the meeting at village Togi. We have carefully considered the evidence of these witnesses but find it very unsafe to rely on it, in so far as, the names of villages Andrai and Togi, where the meetings are alleged to have taken place, as also, the dates of those meetings are missing in the election petition itself. The result is that we find it not proved that either Respondent No. 1 or any of his agents, canvassors or

priests were responsible for giving rise to what the petitioner's learned counsel has called spiritual undue influence.

Now, we take up clause (i)(b).—The petitioner's case is that this clause is connected with points V and (ix). The sum and substance of the allegations made by the petitioner is that the Respondent and his agents and canvassers preached violence and created terror. They told the people that dacoities would stop only if they voted for Respondent No. 1. During the period when the nomination papers were filed and the elections took place (i.e. between the 26th of November 1951 and the 20th of January 1952, *vide* the statements of contesting parties on page 358 a large number of dacoities were committed in Bhim Constituency and in the adjoining constituencies of Kumbhalgarh and Pali district and the dacoities that took place at Ajeetgarh, Kheekavas, Mandawar and in train were exploited to their best advantage for purposes of election by the Respondent No. 1 and his agents and canvassers who openly resorted to lawlessness. Respondent No. 1 and his employees who had been exercising all the administrative powers unduly influenced the people of that area to cast their votes.

The contesting respondent has emphatically denied the above allegations and has on the other hand, suggested that the dacoities, if any—fake or real were rehearsed or committed by the Congress party in general and by the petitioner in particular and that the petitioner and his satellites and agents used to go from place to place making assertions that unless people voted for the Congress the dacoities will continue.

But since no recrimination has been pleaded by the Respondent No. 1, the question is not whether the respondent has established his counter-charges but the question is how far the petitioner himself has proved his allegations.

We have looked into the petitioner's evidence only to find that the said evidence is as poor in quality as it is meagre in quantity. The petitioner has examined himself and has stated that between the Nomination and Election dacoities had occurred at Ajit Garh, Thikarwas (mentioned as Kheekarwas in the petition), Mandawar and Goranghat and that at the latter places, some Government money was looted from a train. According to him, Respondent No. 1 is a Rajput and most of the people arrested in connection with those dacoities were either Rawat (lower class Rajputs) or Rajputs. He says that the supporters of Respondent No. 1 would tell the public that if they voted for Respondent No. 1, the dacoities would cease, otherwise, they would continue. The general public thus got terror struck on account of the dacoities and there was a general feeling that their safety lay only in supporting the Rajputs.

In order to support the above personal statement as also the alleged causation or existence of general feeling of terror, the petitioner has been able to lead some very flimsy evidence of merely three witnesses. The first one of whom is Pratap Singh (P.W. 4) who deposes that about 20 or 25 days before the election, the Respondent No. 1 had visited his village Togi along with about 15 persons who carried 3 or 4 guns or seven or eight lathis, a meeting was held and at that meeting the respondent had stated that unless the votes were given to them the dacoities that were then going on would not stop. The audience then got terrified and promised to vote for the respondent. The next witness on the subject is Ratan Lal (P.W. 6) who has stated that about 15 days before the vote the respondent had visited village Jaitgarh along with 7 or 8 other men, who were armed with 2 or 3 guns and one or two lathis. These men then asked the witness to call 5 or 7 Mahajans *viz.*, Dev Lalji, Ranglalji, Bhurelalji, Lalchandji and Misrilalji. The witness brought these Mahajans and the respondent told them that if they voted for the Congress they would be killed and looted, but, if they voted for himself, they would be protected from the dacoities that were going on. These people and the witness got frightened and promised to vote for the respondent. Out of these 5 Mahajans Devlal (P.W. 7) alone has been examined to corroborate (P.W.6).

The above is the only evidence that has been led before us on the subject of general intimidation or general undue influence. We reject it on two grounds. In the first place the names of the villages where the meetings are said to have taken place have not been mentioned in the petition, and secondly, general intimidation has to be shown to spread over such an extent of ground and to permeate through the community to such an extent that the Tribunal considering the case should be satisfied that the freedom of election had ceased to exist (*vide*,

Drogheda 1 O'M and H page 256). Similarly, the essence of general undue influence is that by reason of the large number of cases in which undue influence has been used, the election has not been a free election. The pleadings of the parties, as also, the evidence that has been led on behalf of the petitioner, do give rise to the suspicion that probably both the parties had partially based their canvassing on the incidence of the dacoities, but, all the same, suspicion howsoever strong is insufficient and it is impossible for us to agree with the petitioner that the election itself was not a free election. It may be that some dacoities were committed in or near about the constituency during the period of election but there is no evidence to directly or indirectly connect the Respondent No. 1 with those dacoities or to draw any definite conclusion that he exploited the occurrence of those dacoities to create a sense of terror amongst the general body of voters to such an extent that the freedom of the election had been generally violated. We accordingly hold that points (i) (b), (v) and (ix) have not been satisfactorily established.

Point (ii).—The only witness produced by the petitioner is Loom Singh (P.W. 5) of village Palra who states that in connection with the voting which took place in his village during the rains about 6 or 7 months before the 18th of March 1953, one Dhana Singh had gone to his village and had told him that respondent Sangram Singh had sent some bottles of wine for the village people and that we should drink the wine and vote for the respondent on the following day when we would also be given some Nazrana. The witness adds that when he, Ram Singh and Panas Singh refused to accept the offer and said that they would vote for whomsoever they liked, Dhana Singh retorted that if they voted for the Congress there will be trouble.

In connection with the testimony of the above witness it has to be remembered that the voting did not take place during the rains but took place during winter and that it did not take place only 6 or 7 months prior to 18th March 1953 but took place prior to the 20th of January 1952. The witness cannot further be relied upon, because, he has remained uncorroborated and it has not been further proved that Dhana Singh was Respondent No. 1's agent or worker (*vide*, the statements of D.Ws. 1 and 4 to the contrary). Therefore, even if the evidence of P.W. 5 be true, it cannot affect the Respondent No. 1. We hold that point (ii) also has remained unsubstantiated.

Point (iii).—Kanhaiya Lal himself has been examined as P.W. 9. His evidence is that on the 4th of January 1952, on which date he distributed identification cards for the Congress in Bhim, when he came out of the Congress office to make water, Respondent No. 1 whipped his revolver at him and threatened to shoot him, because, he was working for the Congress. There is no other evidence in support of the allegation, and so, we regard the allegation as not proved, and more so, because Respondent No. 1 has denied it on oath and oath against oath, the respondent is a more respectable person and therefore, more worthy of belief.

Points (iv), (vii) and (viii).—These points were frankly given up by the learned counsel for the petitioner. There is no evidence in support of them, and so, they are decided against the petitioner.

Point (vi).—The petitioner has alleged that Respondent No. 1 and his agents and canvassers had openly supplied drinks at almost all polling stations on the previous night of polling and after the polling was finished. This allegation suffers from two faults—firstly it does not give full particulars, and secondly, because, the statements of petitioner's witnesses P.Ws. 2 and 3 seem to be unconvincing, inasmuch as, the alleged treating at village Chapli and Chordia-ki-Mali have not been specifically mentioned in the petition.

The result is that the whole of issue 4 is decided against the petitioner for want of satisfactory proof.

Issue 5.—The Respondent No. 1 has failed to make out any case for the award of special costs. The issue is accordingly decided against him.

Issue No. 6.—In view of our findings on the first five issues, the petitioner is entitled to no relief. We decide the issue accordingly.

ORDER

Let the election petition be dismissed. The petitioner shall pay Rs. 500 as costs to the contesting Respondent No. 1.

KOTAH, *Dated August 27, 1955.*

(Sd.) P. D. PANDE, *Chairman.*

(Sd.) J. P. MATHUR, *Judicial Member.*

(Sd.) BISHAN S. DARBARI, *Advocate Member.*

[No. 19/297/52-Elec.III/10409.]

By Order,

P. S. SUBRAMANIAN, Secy.